its structure and arrangement about which there may be some difference of opinion, and this is the absence from the first part of the book of adequate material for the study of the distinction between the common-law fiduciary obligation and the strict trust, by the aid of which the student may trace historically the difference in origin of these two classes of obligations. One of the most puzzling experiences of the student in taking up the study of trusts is, that although he is taught that the trust is a creation of equity and is enforceable only by courts of equity, he finds a large class of fiduciary obligations to which the substantive law of trusts is applied but for which an action at law is the normal remedy. He finds in many such cases that the plaintiff not only has a legal action against the fiduciary but that he may proceed at law on claims owed by third persons to the fiduciary, whereas in the case of the strict trustee his remedy is exclusively in equity against the trustee. It is believed the student can grasp the significance of these peculiarities and understand adequately the relation of the fiduciary obligation or "common-law trust" to true trusts only by studying, early in the course, the scope of the common-law action of account and of debt and *indebitatus assumpsit* as successors to the action of account; the extension of the jurisdiction in equity over the fiduciary relation in bills for an accounting, and finally the use of trover, especially in actions against stock-brokers and agents to collect negotiable paper, as a substitute for a bill in equity. Professor Ames collected much valuable material dealing with this phase of the subject which he placed at the very beginning of his case-book. Professor Scott has compressed this material into two pages and it appears on pages 571 and 572 of his case-book. Many teachers of the subject who regard it as desirable to study the "common-law trust" in comparison with the equity trust, with reference to the procedural differences which have survived to the present day, will regret that this part of Professor Ames' case-book has not been expanded instead of contracted. This phase of the law has an important bearing on much of the litigation which arises out of banking and stock-brokerage transactions and the business conducted by consignees of merchandise and factors generally.

There are some other subjects which are usually taken up in class-room work, that have been omitted, such as the troublesome question (in some jurisdictions) of the trustee's power to delegate trust duties and the liability of one trustee for the default of his co-trustee. Some of the material in Professor Ames' collection which is of historical interest but of little practical value in modern law is also omitted. But when a case-book extends beyond eight hundred pages one cannot urge the treatment of additional subjects. It is inevitable that some selection should be made, and with the possible exception of the treatment of the law relating to common-law fiduciaries, the choice has been made judiciously and skillfully. Without attempting to refer in detail to the many valuable notes which Professor Scott has compiled, especial attention should be directed to the notes on the liability of trustees to third persons, on the distinction between latent and patent equities; to his notes on purchase for value, the statute of frauds, and the liability of agent and subagent banks receiving commercial paper for collection. They represent unusually thorough and patient research and contain much material which it would be difficult to find elsewhere.

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AUTHORITY IN THE MODERN STATE. By Harold J. Laski. New Haven: Yale University Press. 1919. $3.00.

Fifteen years ago in the political science courses we were handed out the hard and fast propositions that the state was sovereign, and somewhere in

every state was located the center of sovereignty, the power to which all else must give way. Then followed the obvious illustration of the British Parliament, which could do anything it wanted except change a man into a woman. Some of us in a moment of rash inquisitiveness asked where this political superior existed in our own country. After an awkward pause we were assured that it consisted of Congress plus three-quarters of the states, since they alone could change the Constitution.[1] Those were the days before federal amendments chased each other like aëroplanes across the Atlantic, and we had already learned that the Constitution would probably never be altered again because of the great difficulties involved. Somehow we were not altogether satisfied to believe in a sovereign that slept like Frederick Barbarossa to awake once in a blue moon, and was, moreover, scattered in pieces across a continent. This alleged center of control seemed inadequate for a hundred million people, far less real than Tammany Hall, which was said not to be a part of our system of government at all. We should have been much better pleased with the explanation of John Chipman Gray, "The real rulers of a political society are undiscoverable."[2]

The problem of the location of sovereignty within the state was less simple than our teachers would have had us believe, and now we begin to doubt whether sovereignty belongs to the state at all. Is it the sole ruler of the people who dwell in the United States, or France, or any other demarcated portion of the earth's surface? Are there other forces operating in the same territory just as powerful in their own spheres as the state, which cannot struggle against them without going down to almost sure defeat? If so, those forces share the sovereignty and leave the state only a limited control of affairs within its borders. Such is Mr. Laski's conclusion.

To lawyers, of all men, this book is especially valuable, for it warns us not to exaggerate the importance of law. From a purely legal point of view, our teachers and John Austin, their master, may have been right. In our professional capacity as judges and practitioners we must acknowledge the men chosen under the Constitution as the supreme rulers of the land and assert that the Constitution is changed solely through the methods provided by its own terms. In that capacity we recognize the validity of the three amendments of 1865–1870 because of their formal adoption, and ignore the fact that they merely register the result of a four years' war, without which they would have been impossible. But just because this assumption that the lawgivers are the real rulers is an essential portion of our professional conduct, we ought to be careful lest we regard it as containing the whole truth. As thinkers and as citizens we must realize that there are powers behind the lawgivers, not mentioned in the Constitution, which shape their acts and sometimes successfully defy them. Law is oftentimes only the formal expression of reality. Any corporation embodies the will of a group of men with a definite purpose, and that group might continue to exist even though refused recognition by the state. The Adamson Law was made, nominally by Congress, actually by unelected bodies whose representatives sat in the gallery during its passage and whom Congress rightly or wrongly chose to obey. Formerly tariffs were regulated by very different unelected bodies whose representatives did not sit in the gallery. In the days of Jethro Bass, the government of New Hampshire was in his room in the Pelican Hotel. The Thirteenth Amendment was not created by Congress and the state legislatures, but by the Northern armies and the awakened conscience of a nation.

Even those who disagree with Mr. Laski and hold that the state as repre-

[1] For a similar view, that sovereignty is in the states collectively, see Irving B. Richman, "From John Austin to John C. Hurd." 14 HARV. L. REV. 371.

[2] THE NATURE AND SOURCES OF THE LAW, § 183.

sentative of all the people has no theoretical bounds will admit that there are practical limits beyond which it is not expedient for government to go, and will find in this book many interesting illustrations of those limits. One of the weaknesses of the study of politics in this country has been its concentration on American and English data, and even then without much consideration of the events of our own time. We have threshed over the old straw until we are sick of it. Unconsciously we have realized that the slavery question, which occupied the thought of our ablest men for forty years, has not much bearing on the problems of to-day. Mr. Laski's book has the great merit of freshness. He brings us a wealth of new facts from contemporary England and from the development of France during the last hundred years.

It must be said that the book is solid reading, and that portions of it were written for scholars, but those parts are easily passed over by the general reader. This is not so much a continuous discussion as a series of studies after the plan common in France. Each chapter is a unit and can be read by itself. It would, indeed, have been desirable to indicate more fully the interconnection and the bearing that all the studies have on the general problem. Persons who are not specialists in politics and history will get most pleasure from the first chapter on recent encroachments upon the traditional irresponsibility of the state, and the last chapter, "Administrative Syndicalism in France," with its side lights on civil-service difficulties in this country. The study of Lamennais adds for most of us a new figure to the great victims of persecution. Chapters two and four, on Bonald and Royer-Collard, may wisely be left till the last as more technical. Royer-Collard has great significance, however, for he faced intelligently the antinomies of order and freedom which confront us to-day, and Professor Freund has recently directed attention to his scientific scrutiny of the proper limitations of freedom of speech.[3]

As a foreign observer in our midst, the author's statements about the United States are full of interest. The list of Americans in the preface to whom indebtedness is acknowledged indicates the insight he has acquired as to our conditions. I shall briefly restate his theory with reference to his American illustrations.

We have long recognized in this country that certain individual interests ought to be free from legal control, which is therefore prohibited by our Bills of Rights. Fashionable as it has been to sneer at those documents in recent years, it may be "that with the great increase of state activity that is so clearly foreshadowed there was never a time when they were so greatly needed." Principles which are the result of social experience are thereby put beyond the reach of ordinary mischance.[4] We have, however, assumed that there is nothing which limits the government except these rights of individuals, ignoring the fact that the state is not the only association to which men are loyal. In his "Studies in the Problem of Sovereignty,"[5] Mr. Laski narrated several defeats suffered by the state when it forced men to choose between it and a church in matters of the spirit. In its own sphere the church would seem to be sovereign. We have not realized this in the United States, because religion has been protected from political interference by tradition and law, but it is disclosed by the way in which the Quakers won exemption from military service during the Civil War and were accorded it as a matter of course in 1917.[6] Other charities should also be allowed to live their own lives, growing unfettered by legal restrictions based on the real or supposed will of dead men,[7]—an inter-

[3] Ernst Freund, "Debs and Free Speech," 19 New Republic, 14 (May 3, 1919).
[4] Laski, *op. cit.*, 62, 101.
Reviewed in 31 Harv. L. Rev. 1171.
[6] Laski, Authority in the Modern State, 45.
[7] Page 102.

esting principle to a lawyer who is considering whether a college can abandon the sectarian requirements in its charter. On the other hand, charities ought to bear the responsibilities of an ordinary corporate enterprise, including liability for the torts of their servants. "A negligently administered charity may aim at inducting us all into the kingdom of heaven, but it is socially essential to make it careful of the means employed." [8] The same duty of meeting its just obligations rests on the greatest association of all, the state.[9]

Thus the author, like Maitland and Gierke, regards the state as a large group, surrounded by other independent groups, which share in its sovereignty. This is a novel conception for American law, which has always failed to "recognize fully the existence of social groups and group relationships," [10] especially that important group, the unincorporated trade-union. Mr. Laski points out that the state can only secure the loyalty of the unionist until he thinks that in the given situation the union has the superior claim. He may believe that the object of a railway strike is worth the temporary industrial dislocation it causes, just as a statesman is willing to involve the country in the sacrifices of war for purposes he considers good.[11] We may not approve the workingman's choice of class welfare over public welfare, but it does impose at least a practical limitation on the power of the state.

Courts of Conciliation, as in Australia,[12] might reconcile the conflict of loyalties, but Mr. Laski proposes an entirely different scheme. He considers that producers must take a direct part in the control of production, and not merely mingle in the general mass of electors. The government can never deal adequately with the interests of the trade-unions, for it naturally represents the whole body of consumers, whose position is irreconcilable with that of the producers. The state may yield an occasional industry to the strikers to secure the public supply of necessities, as a Russian sleigh-driver flings a baby now and then to the wolves, but eventually the electorate will force the government to use its powers to keep down the high cost of living. Of course, the workingman is also a consumer, but not on a large enough scale to outweigh his interest as a producer. The higher wages to be obtained by striking are tangible and immediate; the lower prices to be gained if nobody strikes are too uncertain to influence him. Consequently, Mr. Laski conceives a duplex organization of society. Men will continue as individual consumers to elect the government which will supervise the supply of their needs. On the other hand, the trade-unions, representing men as producers, will choose an independent legislature and executive to regulate remuneration and working conditions. This producers' system, like the hierachy of the Roman Catholic Church, will be outside the state. It is a functional federalism, which will derive much help from the experience of federalism in the United States. And when the interests of producers and consumers conflict, a sort of Supreme Court will decide between them.[13] The difficulties of this plan seem enormous, but there will probably be ample time to consider them before the scheme is adopted. It certainly emphasizes factors which must enter into any system that is ultimately established.

Not only is there danger that the state may become unduly centralized, but the same is true of the churches and the trade-unions. The life of Lamennais is a strong argument for federalism within the Roman Catholic Church, and it is rumored that autocracy is not wholly unknown in the American Federation

[8] Pages 102–05.
[9] Pages 105–07.
[10] Hoxie, TRADE UNIONISM IN THE UNITED STATES, 216.
[11] Laski, *op. cit.*, 83, 84.
[12] H. B. Higgins, "A New Province for Law and Order," 29 HARV. L. REV. 13; 32 HARV. L. REV. 189.
[13] Laski, *op. cit.*, 85–89.

of Labor. This leads the author to emphasize the freedom of the individual as against both the state and the group. The problem is evidently to find a mean between despotic unity and disintegration. He does not, it would seem, solve this problem, but he blocks out the factors which will determine its solution. Devices like federalism and the separation of powers help keep authority within bounds, but liberty is less a tangible substance than an atmosphere. The most carefully planned machinery of government will break down unless it is operated by men who think. "Everyone who has engaged in public work is sooner or later driven to admit that the great barrier to which he finds himself opposed is indifference." [14] "Thought is the one weapon of tried utility in a difficult and complex world." [15] Consequently, the mental qualities and methods of the electorate, the three branches of the government, the leaders of industrial groups, and the civil service, become a decisive element in political life.

Repression of thought in the electorate and the civil service will produce in the end just the kind of spirit that we want to get rid of, — the revolutionary spirit. The experience of France, set forth in the last chapter of the book, shows this conclusively. It is all very well to say that men ought to be loyal to the state. What do we mean by the state? After all, it comes right down to the government that we deal with, and the government comes down to the human beings that we deal with, which means those who will on occasion put us into the hands of the police. If the individuals in the legislatures and the departments of justice and on the bench do not stand for the best things men stand for, — for the development of mind and spirit, and the search for truth, — men begin to wonder whether, after all, that government ought to endure. We cannot love the state as a mystical unity if that unity as we actually face it prevents us from living a true human life. So, in order to make people loyal to the state, you must make the state the kind of institution that they want to be loyal to. Such is the lesson of this very able book.

Z. C., JR.

THE CONFLICT OF LAWS RELATING TO BILLS AND NOTES, preceded by a Comparative Study of the Law of Bills and Notes. By Ernest G. Lorenzen, Professor of Law in Yale University. New Haven: Yale University Press. 1919. pp. 337.

The principal part of this work consists of several articles recently printed in law magazines; but much additional value has been given to them by including the law of Latin-America and of Japan among those compared in the text. A lengthy Appendix has been added, containing the American Negotiable Instruments Act, the English Bills of Exchange Act, the Convention of the Hague on Bills and Notes, and the Uniform Law which formed part of it, together with very useful comparative tables of sections. An eight-page bibliography follows.

It is a pleasure to have so painstaking and scholarly a work. The concise pages of the text represent a thorough study of the subject, a careful thinking through, a clear and logical arrangement of the matter, a sufficiently full reference to authorities, and the matured conclusion of the author on every point. As one studies the work one wonders not that so much could be made out of a narrow subject, but that so much could be carefully stated and considered in so small a compass.

The usefulness of the book to the lawyer and the merchant is apparent. We look for a wonderful expansion of commerce; we are preparing for commercial relations with every part of the world. Whatever else this may entail, it cer-

[14] Pages 107–108. [15] Page 188.